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IN THE

Supreme Court of the United States

October Term, 1980

No. 79-5602

FEODOR FEDORENKO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH, AMERICAN JEWISH COMMITTEE, AMERICAN FEDERATION OF JEWISH FIGHTERS, CAMP INMATES AND NAZI VICTIMS, INC. AND NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL AS *AMICI CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The undersigned, as counsel for the Anti-Defamation League of B'nai B'rith, American Jewish Committee, the American Federation of Jewish Fighters, Camp Inmates and Nazi Victims, Inc. and the National Jewish Community Relations Advisory Council, respectfully move this Court for leave to file the accompanying brief *Amici Curiae* in support of the position of Respondent requesting that this Court affirm the decision below that the misrepresentations and omissions of Petitioner were "material" under 8 U.S.C. § 1451(a) and thus constituted sufficient grounds for an order of denaturalization.

Consent to file the attached brief has been sought from the parties; while the Government has consented, Petitioner, Feodor Fedorenko, has not. It is therefore necessary to request permission of this Court under Rule 42.

B'nai B'rith, founded in 1843, is the oldest civic service organization of American Jews. The Anti-Defamation League was organized in 1913 as a section of B'nai B'rith to advance good will and mutual understanding among Americans of all creeds and races, and to combat racial and religious prejudice in the United States.

The American Jewish Committee was founded in 1906, and likewise has among its major purposes advancing good will and broader understanding among all Americans.

The American Federation of Jewish Fighters, Camp Inmates and Nazi Victims, Inc. is a roof organization, encompassing other survivor groups and organizations. It was organized ten years ago for the purpose of perpetuating the memory of the Jewish people who perished in the Holocaust at the hands of the Nazis.

The National Jewish Community Relations Advisory Council ("NJCRAC") is a coordinating body comprised of eleven national lay Jewish organizations* concerned with American Jewish Community relations and one hundred eight local Jewish Community Councils located in every major city in the United States. One of the important goals of the NJCRAC is the prosecution of denaturalization cases against alleged Nazi war criminals.

The *Amici* are among the leading organizations in the United States devoted to combating anti-Semitism and to

* These organizations are: American Jewish Committee, American Jewish Congress, Anti-Defamation League of B'nai B'rith, Hadassah, Jewish Labor Committee, Jewish War Veterans of the U.S.A., National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America, United Synagogues of America and Women's American ORT.

promoting racial and ethnic harmony generally. These organizations have filed numerous briefs *Amici* in this and other courts in the interest of securing the human rights of all Americans. Each organization is national in scope; each is able to bring to the issues raised on this appeal the perspective of national organizations dedicated to eradicating the vestiges of Nazism. Each respectfully offers this Court its accumulated experience with the issues raised by this case.

The *Amici* seek to submit the accompanying brief because they believe this case presents to the Court a serious challenge to the capacity of the United States Government to fulfill its immigration and naturalization functions, as well as to the process by which Nazi war criminals are brought to justice.

Respectfully submitted,

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Amici respectfully submit that the judgment of the United States Court of Appeals for the Fifth Circuit in the above-captioned case should be affirmed.

Opinions Below

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 597 F.2d 946 (1979). The opinion of the United States District Court for the Southern District of Florida is reported at 455 F. Supp. 893 (1978).

Jurisdiction

The jurisdiction of this Court was invoked under 28 U.S.C. § 1254.

Interest of the Amici Curiae

B'nai B'rith, founded in 1843, is the oldest civic service organization of American Jews. The Anti-Defamation League was organized in 1913 as a section of B'nai B'rith to advance good will and mutual understanding among Americans of all races and creeds, and to combat racial and religious prejudice in the United States.

Among its other activities directed to these ends, the Anti-Defamation League has filed briefs *amicus curiae* opposing practices and policies which adversely impair the integrity and self-respect of individuals of all races. Briefs have been filed in such cases as *Shelley v. Kraemer*, 334 U.S. 1 (1948); *Sweatt v. Painter*, 339 U.S. 629 (1950); *Brown v. Board of Education*, 347 U.S. 483 (1954); *Colorado Anti-Discrimination Commission v. Continental Airlines, Inc.*, 372 U.S. 714 (1963); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229 (1969); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Runyon v. McCrary*, 427 U.S. 160 (1976); and *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976).

The American Jewish Committee was founded in 1906 for the purpose of preventing the infraction of the civil and religious rights of Jews in all parts of the world. Since the end of World War II, the Committee has been actively involved in efforts to bring to justice Nazi war criminals who are now living in the United States. Materials from its archives and information received from its Paris and Jerusalem offices have been made available both to the

Immigration and Naturalization Service and the Department of Justice. The Committee has also filed many *amicus* briefs in this Court.

The American Federation of Jewish Fighters, Camp Inmates and Nazi Victims, Inc. is a roof organization, encompassing other survivor groups and organizations. It was organized ten years ago for the purpose of perpetuating the memory of the Jewish people who perished in the Holocaust at the hands of the Nazis. The Federation hopes that by employing various educational and community activities it can act as a force to keep in check the resurgence of neo-Nazi feeling and actions.

The National Jewish Community Relations Advisory Council ("NJCRAC") is a coordinating body comprised of eleven national lay Jewish organizations concerned with American Jewish Community relations and one hundred eight local Jewish Community Councils located in every major city in the United States. One of the important goals of the NJCRAC is the prosecution of denaturalization cases against alleged Nazi war criminals.

Amici are particularly concerned with the issues posed by the case at bar.

The Court is asked to decide in this case whether misrepresentations in a visa application by Petitioner Feodor Fedorenko ("Fedorenko") as to his whereabouts during World War II, and his deliberate failure to reveal his service as a guard in the Nazi concentration camp at Treblinka, constitute a sufficient basis for an order of denaturalization.

As organizations devoted to the laws and ideals of this country, *Amici* believe that deception by individuals in dealing with our Government should not be rewarded.

More fundamentally, the context in which this issue arises in this case is of particular concern to *Amici*. The

Court is faced here not only with a legal question but also with an historical event of incalculable significance to mankind in general, and to Jews in particular. There has never been a more devastating illustration of racial hatred than the systematic extinction of six million Jews by the Nazis during World War II. The Holocaust will stand forever as history's most brutal assault upon a race of people.

The Treblinka concentration camp, where Fedorenko served, was perhaps the most efficient cog in the Nazi's mass murder machine. At Treblinka alone more than one million people were sent to the gas chambers. Treblinka was cold calculated genocide; its sole purpose was death. No survivors were intended.

Treblinka was exclusively a camp for Jews. It was part of "Einsatz Operation Reinhard," named for Reinhard Heydrich, the mastermind of the "Final Solution" for the Jewish people. Mechanically, efficiently, Jews were herded to Treblinka, six thousand a day beginning July 23, 1942. A party was held to celebrate the one-millionth arrival. During the year Fedorenko served as a guard at Treblinka, three quarters of a million Jews were killed.

Amici speak for these Jews and submit that a just result in this case is vital to insure that their memory and the horrors of Treblinka and the Holocaust are not forgotten.

Statutory Provision Involved

Section 340(a) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1451(a), provides in pertinent part:

> It shall be the duty of the United States attorneys ... to institute proceedings ... for the purpose of revoking and setting aside the order admitting a naturalized citizen to citizenship and canceling the certificate of naturalization on the ground that such

order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation ... .

Questions Presented

1. Is an acknowledged misrepresentation and deliberate failure to disclose service as an armed guard in a concentration camp in an application for a visa "material" under 8 U.S.C. § 1451(a) where the uncontradicted testimony demonstrates that the true facts, if revealed, would have required the denial of the visa, or, at the least, would have prompted an investigation which might have uncovered facts sufficient to deny the visa?

2. Does a court have the discretion to excuse such a material misrepresentation in an application for a visa on "equitable" grounds?

Statement of the Case

Amici adopt the statement of the case presented by the Government and simply highlight a few of the facts developed at the trial and several of the findings of the trial court.

First: Fedorenko conceded that he lied at the time he was issued a visa and again at the time of his naturalization by stating that he had been a farmer in Sarny, Poland from 1937 to March, 1942, and that thereafter he had worked as a laborer in Poelitz, Germany through the end of the war. 455 F. Supp. at 911. In fact, as he acknowledged at trial, Fedorenko was a guard at the concentration camp at Treblinka from approximately September, 1942 until August, 1943. *Id.* at 901. These misstatements were presumably intended to avoid provisions of the Displaced Persons Act, ch. 647, 62 Stat. 1009 (1948), the statute under which Fedorenko was admitted, which would have excluded from

the United States any person assisting the enemy in persecuting civilians or voluntarily assisting enemy forces.

As the trial court found, Fedorenko was armed with a pistol and rifle, was allowed to go on liberty, was even paid for his efforts, 455 F. Supp. at 913, and was well aware of what was going on at Treblinka. *Id.* 903-04.[1] Indeed six witnesses, whose testimony the trial court did not credit, testified that Fedorenko committed a number of atrocities, including severe beatings and even killings. *Id.* at 901-03.

Second: Kempton Jenkins, a career foreign service officer who, following World War II, served as a Vice-Consul in Germany administering the Displaced Persons Act, testified that there were no instances, to his knowledge, in which Treblinka concentration camp guards such as Fedorenko were found eligible for visas under the Act. *Id.* at 912. This testimony was ignored by the trial court, although it was never contradicted in the slightest.

Third: Jenkins further testified that had Fedorenko revealed his prior service as a concentration camp guard, the Government would have definitely launched an investigation in order to determine the full extent of his activities. The trial court expressly accepted this testimony and made a specific finding that "[i]f the Treblinka term had been known, it certainly would have prompted an investigation by the Vice-Counsul to determine whether defendant committed atrocities at Treblinka or served voluntarily as a guard, or was otherwise excludable from admission under ... the Displaced Persons Act." *Id.* at 915.

1. The trial court specifically found "not credible" Fedorenko's testimony that he did not know that Jews were being killed at Treblinka. *Id.* at 903-04. In one of many curious rulings, the court later found, from "observation of his testimony[,]" that other statements made by Fedorenko "were given guilelessly" and stated that the court doubted that "defendant [was] aware ... of the exculpatory nature of [his] answers." *Id.* at 908.

Notwithstanding Fedorenko's admitted misrepresentations, and the testimony of Jenkins and the six survivors of Treblinka, the trial court refused to order a denaturalization. It concluded that Fedorenko's deception was not "material" under 8 U.S.C. § 1451(a) because (1) the concealed facts, if known, would not, in and of themselves, have precluded him from being granted a visa, *id.* at 915, 920 and (2) even though the concealed facts, if known, "certainly would" have prompted an investigation of Fedorenko's activities, there was not sufficient proof that such investigation would have actually turned up facts necessitating a denial of Fedorenko's application. *Id.* at 915-16. The trial court further held that even if Fedorenko's misrepresentations were material, "equitable" considerations – specifically Fedorenko's twenty-nine years of uneventful life in the United States – precluded an order of denaturalization. *Id.* at 918-21.

The United States Court of Appeals for the Fifth Circuit reversed. It held that under this Court's decision in *Chaunt v. United States*, 364 U.S. 350 (1960), the Government need only have shown that Fedorenko's misrepresentations would have prompted an investigation that might have produced evidence sufficient to deny his application for a visa. 597 F.2d at 951. Thus, the Fifth Circuit rejected the trial court's view that the Government must also establish what the investigation would have turned up, and prove that the evidence so uncovered would have dispositively barred Fedorenko from admission. Because of this, the court had no occasion to decide whether the trial court erred in disbelieving all of the testimony regarding Fedorenko's service as a guard. *Id.* at 953. Finally the court held that the trial court had no "equitable" authority to avoid the mandate of the denaturalization statute. *Id.* at 953-54.

On October 30, 1979 Fedorenko filed a petition for certiorari. Certiorari was granted on February 19, 1980.

Summary of Argument

Fedorenko's concealment of his service as a guard at Treblinka was plainly "material" under 8 U.S.C. § 1451(a). The uncontradicted testimony at trial demonstrated that had Fedorenko revealed the facts he would not have been granted a visa. Moreover, even the trial court concluded that had Fedorenko's term at Treblinka been disclosed, it would have prompted an investigation of his activities there.

A material misrepresentation by an applicant for a visa may not be excused by a court for "equitable" reasons. The trial court's decision to the contrary rested on inappropriate precedent and misconstrued any legitimate notion of "equity".

ARGUMENT

POINT 1

FEDORENKO'S MISREPRESENTATIONS WERE MATERIAL UNDER EITHER PART OF THE TWO-PRONG TEST ESTABLISHED BY THIS COURT

Despite Fedorenko's admission that he lied in stating his whereabouts during World War II and failed to disclose that he served as an armed and paid guard at Treblinka – where he was at least aware of the horrors he was helping to inflict – the trial court refused to order that he be denaturalized, finding that Fedorenko's misrepresentations were not "material." This, *Amici* submit, was plain error and was properly rejected by the Court of Appeals.

The Supreme Court in *Chaunt v. United States*, 364 U.S. 350 (1960), articulated a two-fold test for deciding when a misrepresentation in an application for admission to citizenship is "material" and thus disqualifying. Petitioner in *Chaunt* had failed to disclose, *inter alia*, the fact that he had been arrested three times for minor offenses prior to his application. The Court ruled that this misrepresentation would be material under two, independent circumstances:

> "(1) ... [the] facts [which] were suppressed ..., if known, would have warranted denial of citizenship or (2) ... their disclosure might have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." 364 U.S. at 355.

Amici show below that the Government satisfied not one but both branches of the *Chaunt* test in this case.

The evidence satisfied the first branch of the Chaunt test

The first part of the test in *Chaunt* requires a showing that the facts concealed by the applicant would in and of themselves have precluded his admission. In *Chaunt* itself the Court held that the first test was not met since the applicant's arrests did not touch "even peripherally ... [the] types of activity which might disqualify one from citizenship ... ." *Id.* at 354. In contrast, uncontradicted testimony shows that this test was clearly satisfied in this case.

Kempton Jenkins, who administered the Displaced Persons Act following World War II, testified at length that, as the statute was contemporaneously applied, he knew of no guards at concentration camps who were found eligible for

a visa to the United States. Not a single bit of evidence was offered to contradict this testimony. The trial court rejected it for wholly extraneous reasons – because it felt Jenkins had not accurately described the structure of the concentration camp organization, 455 F. Supp. at 912, or the excludability of other types of applicants, *id.* at 912-913,[2] and because Jenkins was not the Vice-Consul who processed Fedorenko's case, *id.* at 916. As the Court of Appeals stated, since the trial court "found no fault with Jenkins's testimony on the processes by which vice-consuls made their decisions regarding visa applications, ... Jenkins's testimony must be accorded substantial weight." 597 F.2d at 953 n.7.[3]

The evidence satisfied the second leg of the Chaunt test

The second branch of the *Chaunt* test requires the Government to prove that the facts concealed by the applicant, if revealed, would have prompted an investigation which might, in turn, have uncovered facts sufficient to deny the applicant a visa. As the Court stated in *Chaunt*, where the

2. Incredibly, the trial court disbelieved Jenkins's testimony with respect to "Kapos", Jewish inmates impressed into service at camps, on the basis of testimony offered by Treblinka survivors -- whose identification of Fedorenko as a perpetrator of atrocities the trial court had earlier rejected.

3. In addition to Jenkins's testimony, six Treblinka survivors testified at the trial, identifying Fedorenko as having committed various atrocities. As noted above, the court rejected this testimony. The reasons advanced by the court were that one witness described Fedorenko as "slightly Chinese looking," when, in the court's opinion, he "simply does not look Oriental;" that another witness described Fedorenko as "mean-looking," when, in the court's opinion, he "had a kind-looking, not hard-looking face, somewhat courtly in appearance;" that a third witness was "theatrical" in his testimony; and that the witnesses took "one to five minutes" to identify Fedorenko's photograph. 455 F.Supp. at 903, 906, 907 and 908. Since it reversed the trial court on other grounds (see p. 7, *supra*,) the Court of Appeals found it unnecessary to review the trial court's findings with respect to this testimony. 597 F.2d at 593.

"disclosure of the true facts might have led to the discovery of other facts which would justify denial of citizenship," denaturalization is required. 364 U.S. at 353.

The Government plainly satisfied this second leg of the *Chaunt* test; indeed the trial court's own findings of fact are themselves determinative on this point. Fedorenko acknowledged at trial that he was a guard at Treblinka from 1942 to 1943; Kempton Jenkins testified that this information, had it been revealed, would have resulted in an investigation; and the trial court specifically found that had Fedorenko told the truth "it certainly would have prompted an investigation" to establish whether, as the trial court "suspected," 455 F. Supp. at 909, Fedorenko committed atrocities at Treblinka or even that he merely served there voluntarily, either of which would have disqualified him for admission to the United States.

Nevertheless, the trial court refused to order Fedorenko's denaturalization. Construing what it believed to be the second leg of the *Chaunt* test, the court held that the Government had to prove not only that the facts suppressed by Fedorenko, if revealed, would have led to an investigation which might have uncovered disqualifying facts but also had to prove the existence of such disqualifying facts. Because, in the trial court's opinion, the Government had failed to prove these further facts, no denaturalization could be ordered.

In so holding, the trial court thoroughly misconstrued the second part of the materiality test announced in *Chaunt*. The trial court's interpretation is belied by the facts, language and logic of *Chaunt* and is, as a matter of policy, wholly unsupportable.

Even a cursory review of *Chaunt* makes clear that the Court's concern was with whether an investigation would have been prompted by the concealed facts, not with what

such an investigation might have uncovered. In *Chaunt*, the Court refused to order a denaturalization because it found that petitioner's three arrests, if revealed, would not have prompted an investigation of his prior political associations. The Court noted that petitioner had disclosed his membership in the International Workers' Order, an organization which the Government had alleged to be dominated by the Communist Party, but that the Government had failed to pursue an investigation of the petitioner. The Court reasoned that the undisclosed arrests were even less likely to have inspired an actual investigation. 364 U.S. at 355.[4] Referring to the "tenuous line of investigation that might have led from the arrests to the alleged communistic affiliations," the Court concluded that the three arrests, without more, would not "have been useful in an investigation possibly leading to the discovery of other facts warranting denial of citizenship." *Id.* In doing so, however, the Court expressly stated that had the petitioner not disclosed his IWO membership, the failure to report the arrests "would have had greater significance." *Id.*

Plainly, the concern of the Court in applying the second test in *Chaunt* was to forestall denaturalizations predicated merely upon misrepresentations which, at the time they

4. Undoubtedly in an effort to come within this reasoning, Fedorenko repeatedly points to the fact that he disclosed the fact that he had worked at Poelitz and contends that because the Government did not launch an investigation into his activities there, it would not have done so had his service at Treblinka been revealed.

In *Chaunt* the Court held that the applicant's disclosure of a fact much more closely linked with a disqualifying fact precluded the Government from contending that it would have launched an investigation had the disclosure been made. Fedorenko's situation is hardly analogous. Poelitz, as the trial court found, was a town then located in Germany, where Fedorenko worked as a laborer. 455 F. Supp. at 911 and n.21. It was not a concentration camp. Nothing about working in Poelitz even remotely suggests -- as service at Treblinka plainly does -- participation in atrocities or voluntarily aiding enemy forces.

were made, would not have definitively prompted any further investigation. The *Chaunt* Court was not at all concerned by the Government's apparent failure to prove the ultimate fact – petitioner's actual role as a Communist organizer; indeed the Court noted that there was only "one witness who ... testified that such was the fact." *Id.* at 354.

Moreover, as the Court of Appeals pointed out, the trial court's view would destroy "the utility of the second *Chaunt* test, since it would require, as does the first *Chaunt* test, that the government prove ultimate facts warranting denial of citizenship." 597 F.2d at 951.

Neither can the trial court's interpretation be justified by policy considerations. Quite the contrary. Requiring the Government to prove "ultimate facts" at the time it discovers an applicant's deception would, as the Court of Appeals noted, give an applicant with a tarnished past every possible incentive to lie about it. *Id.* By failing to provide truthful information, an applicant can successfully seek and procure naturalization when the burden of proof of eligibility is on him. *See Berenyi v. Immigration Director*, 385 U.S. 630, 636-37 (1967). Thereafter, in order for the Government to discharge its statutory duty to denaturalize unqualified persons, *it* would have the strong burden of proving the identical facts, *see Schneiderman v. United States,* 320 U.S. 118, 123 (1943), but years after their occurrence, when the evidence is stale and witnesses unavailable. By lying at the time he enters the country, the dishonest applicant can thus foreclose what will often be the only means of uncovering the truth: an investigation conducted while the evidence is still fresh and the applicant bears the burden of developing the relevant facts.

The irony of this position is illustrated by the actions of the trial court in this case. The Government did seek to prove the "ultimate facts" with eyewitness testimony.

Repeatedly, the trial court referred to the "interval of thirty-five years" in refusing to credit aspects of the Government's case, particularly the photo spreads and the in-court identifications of Fedorenko. 455 F. Supp. at 905, 907. Indeed, the trial court found it "understandable that there were flaws in identification evidence after 35 years," recognizing that this was "part of the difficulty the Government faced in trying to meet its burden of proof." *Id.* at 907.

The difficulty perceived by the trial court, however, is inherent in its view of the second *Chaunt* test, one that would have a particularly drastic impact on cases dealing with alleged Nazi collaborators. In cases of this sort, the relevant events have always taken place many decades ago and potential witnesses consist entirely of victims who managed to survive and who could normally be expected to try to purge from their minds the horrors they encountered. The trial court's decision turns reason on its head; it rewards the deceiver, handicaps the deceived and irreparably deters the process of bringing war criminals to justice.

Amici recognize "the grave consequences to the citizen" of denaturalization, *Chaunt v. United States*, *supra*, 364 U.S. at 353, and share with the *Chaunt* Court a concern that denaturalization not be ordered where the concealed facts would not in fact have prompted an investigation. But that is not this case. However wrong it may have been on other issues, the trial court correctly found that the Government met its heavy burden of showing that an investigation would – not might – have occurred. Where, as here, a contemporaneous investigation is the only certain means of determining the truth, no greater burden is, or should be, imposed.

POINT 2

THE TRIAL COURT HAD NO DISCRETION TO OVERLOOK FEDORENKO'S MISREPRESENTATIONS ON "EQUITABLE" GROUNDS

The trial court held that even if Fedorenko had "willfully concealed material facts in applying for citizenship," 455 F. Supp. at 918, considerations of "equity" – principally the fact that Fedorenko has lived in this country for twenty-nine years and "is an unsophisticated man with very little education who is not only willing but anxious to work ... [and] who is not interested in 'making waves' or causing trouble," *id.* at 920 – nonetheless preclude his denaturalization. Under decisions of this Court, however, the trial court's use of "equitable" considerations constitutes an impermissible tinkering with Congressionally mandated standards for citizenship; moreover, its application of equitable principles to the facts of this case is woefully misguided.

As the Court of Appeals noted, the trial court's reliance on naturalization cases – where courts are called upon to make determinations on amorphous issues such as "good moral character" – is wholly misplaced. 597 F.2d at 953-54. In case after case, this Court has rejected lower court efforts to modulate or otherwise avoid the statutory mandate of Congress in denaturalization proceedings. In *United States v. Ness*, 245 U.S. 319 (1917), for example, the Court ordered denaturalization of a person who "possessed the personal qualifications which entitle aliens to admission and to citizenship," 245 U.S. at 321, but who failed to file a certificate of arrival. The Court found "no power ... in the naturalization court to dispense with" that requirement. *Id.* at 324. Similarly, in *United States v. Ginsberg*, 243 U.S. 472 (1917), the Court ordered a denaturalization

because petitioner's naturalization had not been granted in open court, as the statute required, holding that:

> "An alien who seeks political rights as a member of this nation can rightfully obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in respect of a matter so vital to the public welfare." *Id.* at 474.

See also Maney v. United States, 278 U.S. 17, 23 (1928); *Johannessen v. United States*, 225 U.S. 227, 241-42 (1912).[5]

Moreover, in the context of a case involving an applicant's deliberate misrepresentations and non-disclosures, the trial court's view that Fedorenko's twenty-nine years of uneventful life in the United States is an "equitable" consideration militating against denaturalization is a grotesque one. A person who deliberately hides his past – particularly a past as hideous as this – quite obviously has every motive to pass a quiet, anonymous life. To cite this as a consideration in his favor or, what is worse, to measure good behavior by the length of time a deception has been successfully employed, can hardly be justified on any rational ground.

When Fedorenko lied about his involvement at the Treblinka concentration camp, he subjected himself to a denaturalization proceeding if the truth was one day discovered. The trial court may not now decide that the law should not be enforced.

5. *Knauer v. United States*, 328 U.S. 654 (1946), cited by the trial court, provides no support for its holding. In that case, the Court stressed the unmistakable intent of Congress to prevent fraud on the part of applicants for naturalization, *id.* at 672 & n.11, and held that the statutory power of Congress to cancel certificates of naturalization procured by fraud is even broader than that afforded in equity. *Id.* at 672 n.10. Thus, the Court's reference to "equity" served merely to underscore *the Government's* right to set aside a naturalization order for fraud. *Id.* at 671.

Conclusion

The bounties of American citizenship have justly been called "all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922). Citizenship in this country is precious, not easily acquired, and once obtained, jealously protected.

Fedorenko procured his citizenship by a fraud which entailed the concealment of his role in the darkest chapter of modern civilization. *Amici* urge that this citizenship, so acquired, must be revoked.

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